

**Letter of Findings Number: 02-20130571P  
Tax Administration-Penalty  
For the Period 2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

**ISSUE**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-3-4-4.1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of an estimated tax penalty.

**II. Tax Administration–Penalty and Interest.**

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the imposition of a penalty and interest.

**STATEMENT OF FACTS**

The Indiana Department of Revenue ("Department") issued on July 30, 2013, a proposed assessment to Taxpayer. Taxpayer sent a letter to the Department, dated August 26, 2013, requesting "an abatement of all penalties assessed per your notice." The Department's Business Tax Processing Section, in turn, responded to Taxpayer's letter. A protest letter, dated September 18, 2013, was then mailed by Taxpayer to the attention of the Department's Legal Division.

An administrative hearing was held, and this Letter of Findings results. More facts will be provided below as needed.

**I. Tax Administration–Penalty.**

**DISCUSSION**

At the outset the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department's letter to Taxpayer states:

The corporation was assessed a penalty for underpayment of estimated tax on the fiscal 9/30/12 Indiana return. The penalty is calculated by using the IT-2220 worksheet. Our policy is to apply the remittance with the return towards the 2220 penalty first then any other penalties and interest until the date of the late remittance, leaving a base tax unpaid. This is what took place for the 12/31/12 tax year. The taxpayer was assessed for the second and third quarters of 2012.

The relevant statute is IC § 6-3-4-4.1. That statute states:

(a) Any individual required by the Internal Revenue Code to file estimated tax returns and to make payments on account of such estimated tax shall file estimated tax returns and make payments of the tax imposed by this article to the department at the time or times and in the installments as provided by Section 6654 of the Internal Revenue Code. However, the following apply to estimated tax returns filed and payments made under this subsection:

(1) In applying Section 6654 of the Internal Revenue Code for the purposes of this article, "estimated tax" means the amount which the individual estimates as the amount of the adjusted gross income tax imposed



by this article for the taxable year, minus the amount which the individual estimates as the sum of any credits against the tax provided by [IC 6-3-3](#).

(2) Estimated tax for a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) must be computed by applying not more than one (1) exclusion under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#), regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year.

(b) Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by [IC 6-8.1-10-2.1\(b\)](#).

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

(1) twenty-five percent (25[percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or

(2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

(1) the annualized income installment calculated under subsection (c); or

(2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

(e) The provisions of subsection (c) requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability which, after application of the credit allowed by [IC 6-3-3-2](#) (repealed), shall exceed two thousand five hundred dollars (\$2,500) for its taxable year.

(f) If the department determines that a corporation's:

(1) estimated quarterly adjusted gross income tax liability for the current year; or

(2) average estimated quarterly adjusted gross income tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), after the credit allowed by [IC 6-3-3-2](#) (repealed), the corporation shall pay the estimated adjusted gross income taxes due by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)) or by delivering in person or overnight by courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(g) If a corporation's adjusted gross income tax payment is made by electronic funds transfer, the corporation is not required to file an estimated adjusted gross income tax return.

(h) An individual filing an estimated tax return and making an estimated tax payment under this section must designate:

(1) the portion of the estimated tax payment that represents estimated state adjusted gross income tax liability; and

(2) the portion of the estimated tax payment that represents estimated local income tax liability under [IC 6-3.5](#).

The department shall adopt guidelines and issue instructions as necessary to assist individuals in making the designations required by this subsection.

(Emphasis added).

IC § 6-8.1-10-2.1(b), referenced above, states in relevant part:

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

(1) the full amount of the tax due if the person failed to file the return;

(2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax



- shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

In its protest letter Taxpayer states in part:

Due to an administrative oversight on our [i.e., Taxpayer's] part, the 3<sup>rd</sup> quarter installment payment of \$200,200 for the tax year ending September 30, 2012, was not transmitted until July of 2012. According to your representative, that payment for \$200,200 was applied as a 4<sup>th</sup> quarter installment payment.

Taxpayer's letter also states:

Because much of the 2220 penalty was caused by the administrative oversight in the timing of the 3<sup>rd</sup> quarter installment, we request an abatement of all penalties assessed per your notice.

Taxpayer states that it "has a history of making timely payments and return submissions to Indiana . . . ." The third quarter payment was due on June 20, 2012, and was made by Taxpayer on July 2, 2012. Taxpayer provided the Department with a printout from Taxpayer's internal system to show the attempted estimated payments. After reviewing the Department's records, Taxpayer was not in compliance for both the second and the third quarters for 2012 (quarterly due dates in March and June). The Department finds that Taxpayer has not established "reasonable cause" under [45 IAC 15-11-2\(c\)](#) (a taxpayer "must demonstrate that it exercised ordinary business care and prudence . . .").

### FINDING

Taxpayer's protest is denied.

## II. Tax Administration—Penalty and Interest.

### DISCUSSION

Taxpayer, in a letter to the Department, also states:

Per the notice, [Taxpayer] is also being assessed a penalty of \$1,653.30 on the late payment of the 2011 tax as well as interest of \$350.58.

Taxpayer states that it is requesting "an abatement of all penalties . . . ." Regarding interest, the Department notes that under IC § 6-8.1-10-1(e) interest cannot be waived.

Turning to the penalty assessed pursuant to IC § 6-8.1-10-2.1(a), Taxpayer failed to sufficiently develop its argument on the matter. See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012) (quoting *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010), which stated "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court). Thus Taxpayer's protest is denied.

### FINDING

Taxpayer's protest of the penalty and interest is denied.

### SUMMARY

Taxpayer's protest of the estimated tax penalty is denied; Taxpayer's protest of the penalty and interest is also denied.

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